

114TH CONGRESS  
1ST SESSION

# H. R. 1317

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2015

Received; read twice and referred to the Committee on Agriculture, Nutrition,  
and Forestry

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## AN ACT

To amend the Commodity Exchange Act and the Securities Exchange Act of 1934 to specify how clearing requirements apply to certain affiliate transactions, and for other purposes.

1       *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

1     **SECTION 1. TREATMENT OF AFFILIATE TRANSACTIONS.**

2         (a) COMMODITY EXCHANGE ACT AMENDMENTS.—

3     Section 2(h)(7)(D) of the Commodity Exchange Act (7

4     U.S.C. 2(h)(7)(D)) is amended—

5             (1) by redesignating clause (iii) as clause (v);

6             (2) by striking clauses (i) and (ii) and inserting

7     the following:

8                 “(i) IN GENERAL.—An affiliate of a  
9     person that qualifies for an exception  
10   under subparagraph (A) (including affiliate  
11   entities predominantly engaged in pro-  
12   viding financing for the purchase of the  
13   merchandise or manufactured goods of the  
14   person) may qualify for the exception only  
15   if the affiliate—

16                 “(I) enters into the swap to  
17   hedge or mitigate the commercial risk  
18   of the person or other affiliate of the  
19   person that is not a financial entity,  
20   and the commercial risk that the affil-  
21   iate is hedging or mitigating has been  
22   transferred to the affiliate;

23                 “(II) is directly and wholly-owned  
24   by another affiliate qualified for the  
25   exception under this subparagraph or  
26   an entity that is not a financial entity;

1                 “(III) is not indirectly majority-  
2                 owned by a financial entity;

3                 “(IV) is not ultimately owned by  
4                 a parent company that is a financial  
5                 entity; and

6                 “(V) does not provide any serv-  
7                 ices, financial or otherwise, to any af-  
8                 filiate that is a nonbank financial  
9                 company supervised by the Board of  
10                 Governors (as defined under section  
11                 102 of the Financial Stability Act of  
12                 2010).

13                 “(ii) LIMITATION ON QUALIFYING AF-  
14                 FILIATES.—The exception in clause (i)  
15                 shall not apply if the affiliate is—

16                 “(I) a swap dealer;

17                 “(II) a security-based swap deal-  
18                 er;

19                 “(III) a major swap participant;

20                 “(IV) a major security-based  
21                 swap participant;

22                 “(V) a commodity pool;

23                 “(VI) a bank holding company;

24                 “(VII) a private fund, as defined  
25                 in section 202(a) of the Investment

3                                     “(VIII) an employee benefit plan  
4                                     or government plan, as defined in  
5                                     paragraphs (3) and (32) of section 3  
6                                     of the Employee Retirement Income  
7                                     Security Act of 1974 (29 U.S.C.  
8                                     1002);

“(X) a farm credit system institution;

13 “(XI) a credit union;

14                         “(XII) a nonbank financial com-  
15                         pany supervised by the Board of Gov-  
16                         ernors (as defined under section 102  
17                         of the Financial Stability Act of  
18                         2010); or

1                   or a political subdivision of a country  
2                   other than the United States that is  
3                   engaged in the supervision of insur-  
4                   ance companies under insurance law.

5                   “(iii) LIMITATION ON AFFILIATES’ AF-  
6                   FILIATES.—Unless the Commission deter-  
7                   mines, by order, rule, or regulation, that it  
8                   is in the public interest, the exception in  
9                   clause (i) shall not apply with respect to an  
10                  affiliate if the affiliate is itself affiliated  
11                  with—

12                  “(I) a major security-based swap  
13                  participant;

14                  “(II) a security-based swap deal-  
15                  er;

16                  “(III) a major swap participant;  
17                  or

18                  “(IV) a swap dealer.

19                  “(iv) CONDITIONS ON TRANS-  
20                  ACTIONS.—With respect to an affiliate that  
21                  qualifies for the exception in clause (i)—

22                  “(I) the affiliate may not enter  
23                  into any swap other than for the pur-  
24                  pose of hedging or mitigating com-  
25                  mercial risk; and

1                         “(II) neither the affiliate nor any  
2                         person affiliated with the affiliate that  
3                         is not a financial entity may enter  
4                         into a swap with or on behalf of any  
5                         affiliate that is a financial entity or  
6                         otherwise assume, net, combine, or  
7                         consolidate the risk of swaps entered  
8                         into by any such financial entity, ex-  
9                         cept one that is an affiliate that qual-  
10                         fies for the exception under clause  
11                         (i).”; and

12                         (3) by adding at the end the following:

13                         “(vi) RISK MANAGEMENT PROGRAM.—  
14                         Any swap entered into by an affiliate that  
15                         qualifies for the exception in clause (i)  
16                         shall be subject to a centralized risk man-  
17                         agement program of the affiliate, which is  
18                         reasonably designed both to monitor and  
19                         manage the risks associated with the swap  
20                         and to identify each of the affiliates on  
21                         whose behalf a swap was entered into.”.

22                         (b) SECURITIES EXCHANGE ACT OF 1934 AMEND-  
23                         MENT.—Section 3C(g)(4) of the Securities Exchange Act  
24                         of 1934 (15 U.S.C. 78c-3(g)(4)) is amended—

1                             (1) by redesignating subparagraph (C) as sub-  
2                             paragraph (E);

3                             (2) by striking subparagraphs (A) and (B) and  
4                             inserting the following:

5                                 “(A) IN GENERAL.—An affiliate of a per-  
6                             son that qualifies for an exception under this  
7                             subsection (including affiliate entities predomi-  
8                             nantly engaged in providing financing for the  
9                             purchase of the merchandise or manufactured  
10                            goods of the person) may qualify for the excep-  
11                             tion only if the affiliate—

12                                 “(i) enters into the security-based  
13                             swap to hedge or mitigate the commercial  
14                             risk of the person or other affiliate of the  
15                             person that is not a financial entity, and  
16                             the commercial risk that the affiliate is  
17                             hedging or mitigating has been transferred  
18                             to the affiliate;

19                                 “(ii) is directly and wholly-owned by  
20                             another affiliate qualified for the exception  
21                             under this paragraph or an entity that is  
22                             not a financial entity;

23                                 “(iii) is not indirectly majority-owned  
24                             by a financial entity;

1                 “(iv) is not ultimately owned by a par-  
2                 ent company that is a financial entity; and  
3                 “(v) does not provide any services, fi-  
4                 nancial or otherwise, to any affiliate that is  
5                 a nonbank financial company supervised by  
6                 the Board of Governors (as defined under  
7                 section 102 of the Financial Stability Act  
8                 of 2010).

9                 “(B) LIMITATION ON QUALIFYING AFFILI-  
10                 ATES.—The exception in subparagraph (A)  
11                 shall not apply if the affiliate is—

12                 “(i) a swap dealer;  
13                 “(ii) a security-based swap dealer;  
14                 “(iii) a major swap participant;  
15                 “(iv) a major security-based swap par-  
16                 ticipant;  
17                 “(v) a commodity pool;  
18                 “(vi) a bank holding company;  
19                 “(vii) a private fund, as defined in  
20                 section 202(a) of the Investment Advisers  
21                 Act of 1940 (15 U.S.C. 80b-2(a));  
22                 “(viii) an employee benefit plan or  
23                 government plan, as defined in paragraphs  
24                 (3) and (32) of section 3 of the Employee

1 Retirement Income Security Act of 1974

2 (29 U.S.C. 1002);

3 “(ix) an insured depository institu-

4 tion;

5 “(x) a farm credit system institution;

6 “(xi) a credit union;

7 “(xii) a nonbank financial company

8 supervised by the Board of Governors (as

9 defined under section 102 of the Financial

10 Stability Act of 2010); or

11 “(xiii) an entity engaged in the busi-

12 ness of insurance and subject to capital re-

13 quirements established by an insurance

14 governmental authority of a State, a terri-

15 tory of the United States, the District of

16 Columbia, a country other than the United

17 States, or a political subdivision of a coun-

18 try other than the United States that is

19 engaged in the supervision of insurance

20 companies under insurance law.

21                   “(C) LIMITATION ON AFFILIATES’ AFFILI-  
22                   ATES.—Unless the Commission determines, by  
23                   order, rule, or regulation, that it is in the public  
24                   interest, the exception in subparagraph (A)

1 shall not apply with respect to an affiliate if  
2 such affiliate is itself affiliated with—

- 3                 “(i) a major security-based swap par-  
4 ticipant;  
5                 “(ii) a security-based swap dealer;  
6                 “(iii) a major swap participant; or  
7                 “(iv) a swap dealer.

8                 “(D) CONDITIONS ON TRANSACTIONS.—

9 With respect to an affiliate that qualifies for  
10 the exception in subparagraph (A)—

11                 “(i) such affiliate may not enter into  
12 any security-based swap other than for the  
13 purpose of hedging or mitigating commer-  
14 cial risk; and

15                 “(ii) neither such affiliate nor any  
16 person affiliated with such affiliate that is  
17 not a financial entity may enter into a se-  
18 curity-based swap with or on behalf of any  
19 affiliate that is a financial entity or other-  
20 wise assume, net, combine, or consolidate  
21 the risk of security-based swaps entered  
22 into by any such financial entity, except  
23 one that is an affiliate that qualifies for  
24 the exception under subparagraph (A).”;  
25 and

1                     (3) by adding at the end the following:

2                     “(F) RISK MANAGEMENT PROGRAM.—Any  
3                     security-based swap entered into by an affiliate  
4                     that qualifies for the exception in subparagraph  
5                     (A) shall be subject to a centralized risk man-  
6                     agement program of the affiliate, which is rea-  
7                     sonably designed both to monitor and manage  
8                     the risks associated with the security-based  
9                     swap and to identify each of the affiliates on  
10                    whose behalf a security-based swap was entered  
11                    into.”.

Passed the House of Representatives November 16,  
2015.

Attest:

KAREN L. HAAS,

*Clerk.*